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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 RYAN R. JOHNSON,) NO. ED CV 18-1572-E
12)
13 Plaintiff,)
14)
15 v.) MEMORANDUM OPINION
16)
17 NANCY A. BERRYHILL, Deputy)
18 Commissioner for Operations,)
19 Performing duties and functions not)
20 reserved to the Commissioner of)
21 Social Security,)
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23 Defendant.)
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BACKGROUND

Plaintiff was born on August 18, 1989 (Administrative Record ("A.R.") 33). Plaintiff asserts disability since October 25, 1997, based on, inter alia, allegations of autism, mental processing problems (i.e., poor short term memory, poor processing speed, needing continuous supervision), visual processing problems (i.e., turned in eye with no "binocularity" and limited peripheral vision), and difficulty with fine motor coordination (A.R. 24, 33, 257-64, 291, 308, 315, 323, 367). An Administrative Law Judge ("ALJ") reviewed the record and heard testimony from Plaintiff, a medical expert and a vocational expert (A.R. 15-25, 32-53). At the time of the August 24, 2017 administrative hearing, Plaintiff reportedly had been working 24 hours a week at Wal-mart with the assistance of a job coach arranged through the California Department of Rehabilitation (A.R. 31, 34-35).

In an October 3, 2017 decision, the ALJ found that Plaintiff has "severe" autism spectrum disorder (A.R. 17). However, the ALJ also found that Plaintiff retains the residual functional capacity for work at all exertional levels, limited to simple repetitive tasks that are object oriented, involve no interaction with the general public and only occasional interaction with coworkers and supervisors. See A.R. 19-24 (giving "great weight" to medical expert's testimony at A.R. 39-40, 42, and to state agency physicians' similar findings at A.R. 66-69, 92-96). The ALJ determined that Plaintiff is capable of performing work as an industrial cleaner, hospital cleaner and room cleaner, and, on that basis, denied disability benefits (A.R. 24-25 (adopting vocational expert testimony at A.R. 51)).

1 On June 13, 2018, the Appeals Council denied review (A.R. 1-5).
2 Plaintiff had submitted to the Appeals Council his exit interview and
3 termination records from Wal-mart dated October 1, 2017, which the
4 Appeals Council declined to "consider and exhibit" (A.R. 2). The
5 Appeals Council stated that the evidence did not show a reasonable
6 possibility of changing the outcome of the decision (A.R. 2).
7 Accordingly, Plaintiff's October 1, 2017 Wal-mart records are not a
8 part of the Administrative Record.

9 10 STANDARD OF REVIEW

11
12 Under 42 U.S.C. section 405(g), this Court reviews the
13 Administration's decision to determine if: (1) the Administration's
14 findings are supported by substantial evidence; and (2) the
15 Administration used correct legal standards. See Carmickle v.
16 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
17 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,
18 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such
19 relevant evidence as a reasonable mind might accept as adequate to
20 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
21 (1971) (citation and quotations omitted); see also Widmark v.
22 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

23
24 If the evidence can support either outcome, the court may
25 not substitute its judgment for that of the ALJ. But the
26 Commissioner's decision cannot be affirmed simply by
27 isolating a specific quantum of supporting evidence.
28 Rather, a court must consider the record as a whole,

1 weighing both evidence that supports and evidence that
2 detracts from the [administrative] conclusion.

3
4 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
5 quotations omitted).

6
7 **DISCUSSION**

8
9 After consideration of the record as a whole, Defendant's motion
10 is granted and Plaintiff's motion is denied. The Administration's
11 findings are supported by substantial evidence and are free from
12 material¹ legal error. Plaintiff's contrary arguments are unavailing.

13
14 **I. Substantial Evidence Supports the Conclusion that Plaintiff Could**
15 **Work through the Date of the ALJ's Decision.**

16
17 Substantial evidence supports the administrative conclusion that
18 Plaintiff can work. Significantly, no physician has opined Plaintiff
19 was totally disabled at any time during the alleged disability period.
20 See Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir. 1993) (in
21 upholding the Administration's decision, the Court emphasized: "None
22 of the doctors who examined [claimant] expressed the opinion that he
23 was totally disabled" or "implied that [claimant] was precluded from
24 all work activity") (emphasis original); accord Curry v. Sullivan, 925

25
26
27 ¹ The harmless error rule applies to the review of
28 administrative decisions regarding disability. See Garcia v.
Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 F.2d 1127, 1130 n.1 (9th Cir. 1990). To the contrary, as summarized
2 below, the state agency physicians, the consultative examiner, and the
3 medical expert all opined that Plaintiff retains a residual function
4 capacity consistent with the residual functional capacity the ALJ
5 found to exist.

6
7 **A. Summary of the Medical Opinion Evidence of Record**
8

9 State agency physicians reviewed the available record in February
10 and April of 2015, and opined that Plaintiff was not disabled. See
11 A.R. 59-71, 87-98 (finding limitations consistent with the ALJ's
12 residual functional capacity determination, i.e., Plaintiff would be
13 capable of: (1) understanding and remembering simple instructions and
14 procedures as well as work locations; (2) maintaining concentration,
15 pace and persistence for simple routines throughout a normal work
16 day/week; (3) accepting routine supervision and interacting with co-
17 workers in a non-collaborative and superficial basis, and would
18 "benefit" from non-public work given his autism; and (4) adapting to a
19 routine and predictable work environment, recognizing typical hazards,
20 traveling to routine locations, and setting goals independently,
21 within the foregoing framework).

22
23 Treating psychologist Dr. Aubrey Fine provided a detailed
24 "Evaluation Form for Mental Disorders" dated May 1, 2015 (A.R. 447-
25 59). Dr. Fine had treated Plaintiff since October of 2002, when
26 Plaintiff was in seventh grade and had been referred to Dr. Fink after
27 a diagnosis of "ADHD" (Attention Deficit Hyperactivity Disorder) with
28 significant social difficulties and fine and gross motor difficulties

1 reportedly consistent with "high-functioning autism" or Asperger's
2 syndrome (a category of autism spectrum disorder) (A.R. 448-52, 455).²
3 Dr. Fine described Plaintiff as "quite a friendly individual," with:
4 (1) some reported social difficulties with others especially in new
5 situations; (2) reported full scale intelligence in the "low average"
6 range; (3) identified weaknesses in visual motor, visual perception,
7 and auditory and visual memory skills; and (4) a diagnosed attention
8 disorder (A.R. 453).

9
10 Dr. Fine opined that Plaintiff's social functioning would likely
11 impact Plaintiff's ability to interview, obtain and sustain a job
12 (A.R. 454). Dr. Fine also opined that Plaintiff's autism spectrum
13 disorder "would to some degree impact his ability to work and to
14 sustain a position" (A.R. 457-58). However, Dr. Fine also opined that
15 Plaintiff "has the ability to work under certain circumstances when
16

17 ² In a letter dated November 11, 2014, Dr. Fine stated
18 that she had provided outpatient therapy for Plaintiff every
19 other week for several years due to Plaintiff's diagnoses of
20 autistic spectrum disorder and learning disability (A.R. 440; see
21 also A.R. 473-96, 562-69 (Dr. Fine's available treatment notes
22 from November of 2014 through January of 2017); A.R. 704 (undated
23 summary of treatment from February of 2017 through July of
24 2017)). In a "Mental Disorder Questionnaire Form" dated
25 December 30, 2014, Dr. Fine stated that Plaintiff also had an
26 adjustment disorder (A.R. 441-45). Dr. Fine described social
27 functioning as Plaintiff's "greatest diff[iculty]" in that
28 Plaintiff reportedly has "tremendous diff[iculty]" relating with
others his age, with a "very limited" social network and social
skill deficits "in direct relationship to his disorder" (A.R.
444). Dr. Fine opined that Plaintiff has challenges in his
sustained attention, finishing "many of his academic
responsibilities [with] the support of tutors [and] his family"
(A.R. 444). Dr. Fine also opined that Plaintiff's developmental
delays will present challenges over Plaintiff's lifetime (A.R.
445).

1 appropriate accommodations are given in the work place," which may
2 include: (1) a detailed orientation of job duties and expectations;
3 (2) clear, precise instructions including expected time frames to
4 complete duties; (3) feedback from Plaintiff to verify he understands
5 instructions and what is expected of him; and (4) frequent supervisor
6 feedback regarding Plaintiff's job performance (A.R. 455).

7
8 Dr. Fine also provided a "Mental Work Restriction Questionnaire"
9 dated May 1, 2015 (A.R. 460-61). Therein, Dr. Fine opined that
10 Plaintiff would have no impairment in his ability to: (1) understand,
11 remember and carry out short and simple instructions; (2) maintain
12 attention for two hour segments; (3) maintain regular attendance and
13 be punctual; or (4) be aware of normal hazards and take appropriate
14 precautions (A.R. 460). Plaintiff reportedly would have "slight"
15 impairment in his ability to: (1) remember work-like procedures;
16 (2) sustain an ordinary routine without special supervision; (3) work
17 in coordination with or in close proximity to others without being
18 distracted by them; (4) make simple work-related decisions;
19 (5) complete a normal workday without interruptions from
20 psychologically based symptoms, performing at a consistent pace
21 without an unreasonable number of and length of rest periods; and
22 (6) respond appropriately to changes in a work setting (A.R. 460-61).
23 Plaintiff reportedly would have "slight" to "moderate" limitation in
24 his ability to: (1) accept instructions and respond appropriately to
25 criticism from supervisors; and (2) get along with coworkers or peers
26 without distracting them or exhibiting behavioral extremes, based on
27 his difficulty sustaining and initiating social interactions (A.R.
28 461). Dr. Fine indicated a "guarded" prognosis, stating that the

1 challenge for Plaintiff "may be his difficulties interviewing &
2 finding a position to get hired" (A.R. 461).

3
4 Treating optometrist Dr. Douglas W. Stephey completed a
5 Department of Rehabilitation form dated October 13, 2015, which stated
6 that Plaintiff has diagnoses of "Asperberger's" [sic], right eye
7 esotropia/hypotropia with a history of eye muscle surgery, working
8 memory deficits, oculomotor/eye tracking deficits, developmental
9 dyslexia and magnocellular/motion processing deficits (A.R. 462-63;
10 see also A.R. 464-69 (Dr. Stephey's "Vision Therapy Evaluation Report"
11 for evaluations in December of 2013 and January of 2014, and an
12 addendum in June of 2014); A.R. 516-22 (eye surgery records); A.R.
13 647-86 (Dr. Stephey's treatment notes)). On prior testing, Plaintiff
14 reportedly had: (1) corrected visual acuities of 20/20 in both eyes,
15 wore contact lenses, and had no "binocularity" (eye teaming);
16 (2) failed Magnocellular Pathway Diagnostic Screening, which measures
17 how fast the brain can use vision and how the brain knows "where" to
18 point the eyes and move the body through space; (3) "severely
19 handicapped" reading; and (4) "significant weaknesses" in visual
20 processing speed, visual sequential memory, auditory sequential
21 memory, visual memory, auditory memory and global memory (A.R. 465-68,
22 668-70, 681-82). Dr. Stephey opined that Plaintiff had "working
23 memory deficits" which would present "challenges remembering visual
24 and auditory instructions" and difficulties with any lengthy reading

25 ///

26 ///

27 ///

28 ///

1 (A.R. 463).³

2
3 Dr. Ruth Stacy evaluated Plaintiff to determine Plaintiff's
4 eligibility for Inland Regional Center services, and Dr. Stacy
5 prepared a psychological assessment dated June 21, 2016 (A.R. 525-33).
6 According to the assessment, Plaintiff reported the following: He had
7 graduated from high school with special education services and a 3.53
8 grade point average in regular education classes, and earned an
9 Associate of Arts degree in radio broadcasting in June of 2013 from
10 Mt. St. Antonio College through its disabled student programs, with
11 accommodations of preferred seating, shared notes and extra time to
12 complete examinations in a quiet environment (A.R. 526; see also A.R.
13 273-82, 309, 335-37, 406, 439, 448-49 (school-related records)).
14 Plaintiff wanted to attend La Verne University, but needed to take a
15 few classes before he could transfer (A.R. 526). While Plaintiff was
16 in college, Plaintiff had interned with an indoor soccer league,
17 helping to run a merchandise stand (A.R. 526). Plaintiff also took
18 classes in Microsoft Office and received a certificate (A.R. 526).
19 Plaintiff had volunteered at an animal shelter and a thrift store and
20 had worked for his uncle's nursery, watering plants for one week (A.R.
21 526). Plaintiff was receiving services from the Department of
22 Rehabilitation and had just started working at "OPARC," shipping and
23 packing for UPS (A.R. 526).

24
25 ³ The state agency physicians reviewed Dr. Fine's
26 November, 2014 letter and Mental Disorder Questionnaire and Dr.
27 Stephey's Vision Therapy Evaluation Report and Addendum, and the
28 state agency physicians opined that Plaintiff was capable of
sustaining "NP SRT" (non-public simple repetitive tasks) (A.R.
60-66, 93-93).

1 Dr. Stacy summarized available records dating back to May of 2000
2 (A.R. 527-29). Intelligence testing when Plaintiff was 10 years old
3 reportedly showed a full scale score of 86 (A.R. 527). While
4 Plaintiff reportedly presented with learning disabilities, including
5 memory and attention deficits, he compensated for those weaknesses and
6 was considered not eligible for special education services because his
7 needs could be met in a regular classroom setting with modifications
8 (A.R. 527). Plaintiff was reassessed when he was 13 years old and
9 reportedly was found to have a full scale IQ score of 85, expressive
10 language skills in the "average" range, and it was noted that
11 Plaintiff got along well with others and was compliant in the
12 classroom (A.R. 527-28). Plaintiff again reportedly had memory and
13 attention deficits, but this time his evaluator reportedly concluded
14 that Plaintiff's needs could not be met solely through modifications
15 of a general education program (A.R. 528). Plaintiff was reassessed
16 when he was 16 years old, which reportedly showed disabilities in fine
17 motor skills, visual and auditory memory, and visual-motor integration
18 which "pulled down" his testing scores (A.R. 528-29). Plaintiff
19 reportedly appeared to compensate for his "weaknesses" by performing
20 within his ability on testing and in the classroom (A.R. 529).
21 Reportedly, Plaintiff then did not meet the criteria for special
22 education programming (A.R. 529).

23
24 More recent psychological testing reportedly yielded scores
25 suggesting Plaintiff has autism spectrum disorder (A.R. 529-30, 532).
26 Adaptive behavior testing reportedly showed a survival skills quotient
27 of 95, which was within the average range of functioning (A.R. 529,
28 531-32). Plaintiff was not given cognitive testing because his prior

1 findings suggested cognitive skills in the low average to average
2 range of intellectual functioning (A.R. 530). No communication
3 difficulties were reported (A.R. 530). Plaintiff reportedly engaged
4 in reciprocal social communication with Dr. Stacy, "but not to the
5 extent that one might expect" (A.R. 530-31).

6
7 Dr. Stacy opined that Plaintiff did not meet the criteria for
8 diagnosis of an intellectual disability, but he did meet the criteria
9 for autism spectrum disorder (A.R. 532). Dr. Stacy concluded that
10 Plaintiff's autism spectrum disorder was not a "substantial
11 disability" under California law to be eligible for Regional Center
12 services because Plaintiff did not have "substantial deficits" in
13 adaptive functioning (A.R. 532-33). Dr. Stacy diagnosed autism
14 spectrum disorder and recommended Department of Rehabilitation
15 vocational training to develop job-related skills (A.R. 533).⁴

16
17 ⁴ Although Plaintiff reportedly sought a "second opinion"
18 from Dr. Duprez of Haven Psychological Associates sometime before
19 August 31, 2016, there is no evaluation from Dr. Duprez in the
20 record. See A.R. 538 (letter referencing evaluation). Plaintiff
21 apparently requested a hearing regarding the denial of Inland
22 Regional Center services, which was scheduled for September 12,
23 2016 (A.R. 534-37). The record does not contain any further
24 records regarding Plaintiff's appeal, but there is an undated
25 letter from the Inland Regional Center indicating that Plaintiff
26 was eligible to receive, and was receiving, services based on the
27 autism spectrum disorder and ADHD diagnoses (A.R. 646). A
28 Regional Center "Individual Program Plan" dated November 14,
2016, concerns Plaintiff's plan to get a job and states, inter
alia, that Plaintiff reportedly was eager to gain employment,
able to focus on preferred tasks for at least 30 minutes before
needing a break and able to use public transportation (A.R. 687-
700). Plaintiff reportedly displayed "disruptive social
behaviors" almost every day when talking with others, but no
emotional outbursts, physical aggression or self-injurious
behaviors (A.R. 690).

1 Consultative examiner Dr. Anthony Benigno prepared a Complete
2 Psychological Evaluation dated September 22, 2016 (A.R. 543-47).
3 Plaintiff reportedly had been diagnosed with Asperger's disorder,
4 ataxic dyskinetic cerebral palsy, non-hyperactive ADHD and high-
5 functioning autism, with a history of outpatient psychotherapy for
6 autism and social integration training (A.R. 544). Plaintiff
7 reportedly spent his days watching television, listening to music,
8 reading, washing dishes and using the computer (A.R. 544).

9
10 On examination, Plaintiff reportedly had a euthymic mood with
11 restricted range of affect, intact immediate, recent and remote
12 memories, an ability to sustain attention and concentration during his
13 interview and testing, an adequate fund of knowledge and adequate
14 judgment for commonsense hypothetical events, but "poor" insight into
15 his illness (A.R. 545). Testing showed a full scale IQ score of 89,
16 suggesting Plaintiff's general intellectual functioning is in the low
17 average range (A.R. 546). Dr. Benigno opined that Plaintiff has
18 Asperger's disorder (by history) with a Global Assessment of
19 Functioning ("GAF") score of 80 (A.R. 546-47). See American
20 Psychological Association, Diagnostic and Statistical Manual of Mental
21 Disorders ("DSM-IV-TR") 34 (4th Ed. 2000).⁵

22 ///

23
24 ⁵ The GAF scale is used by clinicians to report an
25 individual's overall level of functioning. A GAF score of 71-80
26 indicates: "If symptoms are present, they are transient and
27 expectable reactions to psycho-social stressors (e.g., difficulty
28 concentrating after a family argument); no more than slight
impairment in social, occupational, or school functioning (e.g.,
temporarily falling behind in schoolwork)." See DSM-IV-TR, p.
34.

1 Dr. Benigno opined that Plaintiff would be able to:
2 (1) understand, remember and carry out short, simplistic instructions
3 with no difficulty; (2) understand, remember and carry out detailed
4 and complex instructions with mild difficulty; (3) make simplistic
5 work-related decisions without special supervision with mild
6 difficulty; (4) comply with job rules such as safety and attendance
7 with no difficulty; (5) respond to changes in the workplace with
8 moderate difficulty; and (6) maintain persistence and pace in a normal
9 workplace setting with mild difficulty (A.R. 547; see also A.R. 548-50
10 (Dr. Benigno's "Medical Source Statement of Ability to Do Work-Related
11 Activities (Mental)" form reporting mostly "none" to "mild"
12 limitations due to Plaintiff's "low average cognitive functioning,"
13 and "moderate" limitations in Plaintiff's ability to respond
14 appropriately to changes in a work setting)). Dr. Benigno indicated
15 that Plaintiff presented with no history of interpersonal difficulties
16 and was socially appropriate on examination, and Dr. Benigno opined
17 that Plaintiff would have no difficulty interacting with supervisors,
18 coworkers and peers on a consistent basis (A.R. 547).

19
20 Psychologist Dr. David Glassmire reviewed the record, including
21 the opinions summarized above, and testified at the administrative
22 hearing (A.R. 35-43). Dr. Glassmire opined that Plaintiff has autism
23 spectrum disorder without accompanying language or intellectual
24 disturbance (A.R. 35-36). Dr. Glassmire recommended that Plaintiff be
25 limited to simple and routine tasks, no interaction with the public
26 and only occasional interaction with coworkers and supervisors (i.e.,
27 in an "isolated type work setting" with interaction with others 1/3 of
28 the day or less) (A.R. 39-40, 42). Dr. Glassmire considered

1 Plaintiff's alleged need for a job coach (as argued by Plaintiff's
2 counsel) and opined that Plaintiff would need a coach only for jobs
3 that required more social interaction than required by the jobs Dr.
4 Glassmire opined Plaintiff could perform (A.R. 40-41).

5
6 Thus, Drs. Benigno, Glassmire, and the state agency physicians
7 all opined Plaintiff retains a residual functional capacity equal to
8 or greater than the residual functional capacity the ALJ determined to
9 exist. These medical opinions constitute substantial evidence to
10 support the conclusion Plaintiff can work. See, e.g., Orn v. Astrue,
11 495 F.3d 625, 631-32 (9th Cir. 2007) (opinion of an examining
12 physician can provide substantial evidence to support an
13 administrative conclusion of non-disability); Tonapetyan v. Halter,
14 242 F.3d 1144, 1149 (9th Cir. 2001) (opinion of non-examining medical
15 expert "may constitute substantial evidence when it is consistent with
16 other independent evidence in the record") (citation omitted); Andrews
17 v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (opinions of non-
18 examining physicians which do not contradict "all other evidence in
19 the record" may furnish substantial evidence to support the
20 administrative decision) (citation omitted).

21
22 To the extent any of the medical evidence is in conflict, it was
23 the prerogative of the ALJ to resolve such conflicts. See Lewis v.
24 Apfel, 236 F.3d 503, 509 (9th Cir. 2001); see also Treichler v.
25 Commissioner, 775 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it to
26 the ALJ" "to resolve conflicts and ambiguities in the record"). When
27 evidence "is susceptible to more than one rational interpretation,"
28 the Court must uphold the administrative decision. See Andrews v.

1 Shalala, 53 F.3d at 1039-40; accord Thomas v. Barnhart, 278 F.3d 947,
2 954 (9th Cir. 2002); Sandgate v. Chater, 108 F.3d 978, 980 (9th Cir.
3 1997). The Court will uphold the ALJ's rational interpretation of the
4 evidence in the present case notwithstanding any conflicts in the
5 record.

6
7 **B. Other Evidence Supportive of the Administrative Decision**
8

9 Other substantial evidence also supports the administrative
10 decision. An "OPARC" report providing a "hands on" assessment of
11 Plaintiff's ability to function in an "integrated and realistic work
12 environment" dated August 3, 2016, suggests Plaintiff is capable of:
13 (1) packaging and assembly work counting screws and placing them
14 inside a bag, with "exceptional" performance at an above-level speed
15 and accuracy, and with Plaintiff keeping to himself throughout the
16 assessment; (2) assembly work counting fourteen strands and rubber
17 banding them together in a specific way "very diligently," although
18 Plaintiff reportedly was visibly agitated and did not engage his co-
19 workers; and (3) cafeteria work involving collaboration with staff and
20 a job coach, where Plaintiff used a cash register, took food orders,
21 cleaned, stocked shelves, and engaged with staff and customers (A.R.
22 553-54, 556, 560). Plaintiff's evaluator stated that Plaintiff
23 "consistently demonstrates the ability to complete tasks without any
24 difficulty, [and] when necessary does not hesitate to ask for further

25 ///

26 ///

27 ///

28 ///

1 directives" (A.R. 560).⁶

2
3 The vocational expert testified that a person with the residual
4 functional capacity the ALJ found to exist could perform the jobs the
5 ALJ identified, which exist in significant numbers in the national
6 economy (A.R. 50-51). The ALJ properly could rely on this testimony
7 in denying disability benefits. See Barker v. Secretary, 882 F.2d
8 1474, 1478-80 (9th Cir. 1989); Martinez v. Heckler, 807 F.2d 771,
9 774-75 (9th Cir. 1986).

10 ///

11
12 ⁶ Plaintiff reportedly did not want to do any packaging
13 or assembly work because the work supposedly was below his
14 capacity and he did not feel challenged, and he also had no
15 desire to work in the heat or in jobs requiring lifting (A.R.
16 560; see also A.R. 704 (Dr. Fine's summary after Plaintiff's
17 July 10, 2016 visit, reporting that Plaintiff was discouraged by
18 his Wal-mart job because he was working outside in the heat)).
19 Plaintiff's evaluator, who was not a medical source (see A.R. 553
20 (noting she was a "Marketing Manager/Job Developer")), stated
21 that Plaintiff would "benefit" from job coaching services for a
22 job's initial 90-day probationary period to assist with
23 "employment retention" (A.R. 560).

24 The ALJ did not materially err in rejecting the evaluator's
25 suggestion Plaintiff would benefit from a job coach. Even if the
26 evaluator were an acceptable medical source (which this evaluator
27 was not), the ALJ would not err by declining to adopt the
28 evaluator's suggestion. See Jacob v. Berryhill, 2018 WL 6650599,
at *2 (9th Cir. Dec. 18, 2018) (an ALJ does not err by declining
to include doctor recommendations, as opposed to imperatives,
when formulating claimant's residual functional capacity;
residual functional capacity represents "the most [a claimant]
can still do despite [his or her] limitations," not a claimant's
"ideal work conditions") (citations omitted); see also Ernesto
S.S. by Ramirez v. Berryhill, 2019 WL 285796, at *4 (C.D. Cal.
Jan. 22, 2019) (finding doctor's opinion that claimant would
"benefit" from a job coach was not an opinion concerning the
claimant's residual functional capacity; the doctor did not opine
that a job coach was not necessary for the claimant to work).

1 **II. The ALJ Stated Legally Sufficient Reasons for Finding Plaintiff's**
2 **Statements and Testimony Less Than Fully Credible.**

3
4 Plaintiff challenges the sufficiency of the ALJ's reasons for
5 finding Plaintiff's statements and testimony not entirely credible.
6 See Plaintiff's Motion, pp. 4-11. An ALJ's assessment of a claimant's
7 credibility is entitled to "great weight." Anderson v. Sullivan, 914
8 F.2d 1121, 1124 (9th Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531
9 (9th Cir. 1985). Where, as here, an ALJ finds that a claimant's
10 medically determinable impairments reasonably could be expected to
11 cause some degree of the alleged symptoms of which the claimant
12 subjectively complains, any discounting of the claimant's complaints
13 must be supported by "specific, cogent" findings. See Berry v.
14 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010); Lester v. Chater, 81 F.3d
15 821, 834 (9th Cir. 1995); but see Smolen v. Chater, 80 F.3d 1273,
16 1282-84 (9th Cir. 1996) (indicating that ALJ must state "specific,
17 clear and convincing" reasons to reject a claimant's testimony where
18 there is no evidence of malingering).⁷ Generalized, conclusory
19 findings do not suffice. See Moisa v. Barnhart, 367 F.3d 882, 885

21 ⁷ In the absence of an ALJ's reliance on evidence of
22 "malingering," most recent Ninth Circuit cases have applied the
23 "clear and convincing" standard. See, e.g., Leon v. Berryhill,
24 880 F.3d 1041, 1046 (9th Cir. 2017); Brown-Hunter v. Colvin, 806
25 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin, 775 F.3d
26 1133, 1136-37 (9th Cir. 2014); Treichler v. Commissioner, 775
27 F.3d at 1102; Ghanim v. Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir.
28 2014); Garrison v. Colvin, 759 F.3d 995, 1014-15 & n.18 (9th Cir.
2014); see also Ballard v. Apfel, 2000 WL 1899797, at *2 n.1
(C.D. Cal. Dec. 19, 2000) (collecting earlier cases). In the
present case, the ALJ's findings are sufficient under either
standard, so the distinction between the two standards (if any)
is academic.

1 (9th Cir. 2004) (the ALJ's credibility findings "must be sufficiently
2 specific to allow a reviewing court to conclude the ALJ rejected the
3 claimant's testimony on permissible grounds and did not arbitrarily
4 discredit the claimant's testimony") (internal citations and
5 quotations omitted); Holohan v. Massanari, 246 F.3d 1195, 1208 (9th
6 Cir. 2001) (the ALJ must "specifically identify the testimony [the
7 ALJ] finds not to be credible and must explain what evidence
8 undermines the testimony"); Smolen v. Chater, 80 F.3d at 1284 ("The
9 ALJ must state specifically which symptom testimony is not credible
10 and what facts in the record lead to that conclusion."); see also
11 Social Security Ruling 16-3p (eff. March 28, 2016).⁸ As discussed
12 below, the ALJ properly discounted Plaintiff's subjective complaints.

13
14 **A. Plaintiff's Testimony and Statements**

15
16 Plaintiff testified that he lived with his parents and said that,
17 when he is not at work, he relaxes, watches television and helps with
18 cooking (A.R. 44-45). Before his job at Wal-mart, Plaintiff had held
19 temporary, part-time jobs which had not required a job coach (A.R. 44,
20 48). Plaintiff said he constantly asks "higher ups" what to do (A.R.
21 44). Reportedly, Plaintiff's job coach at Wal-mart was teaching him
22 how to perform tasks, making sure that Plaintiff met "company

23
24 ⁸ Social Security Rulings ("SSRs") are binding on the
25 Administration. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1
26 (9th Cir. 1990). SSR 16-3p superseded SSR 96-7p, but may have
27 "implemented a change in diction rather than substance." R.P. v.
28 Colvin, 2016 WL 7042259, at *9 n.7 (E.D. Cal. Dec. 5, 2016); see
also Trevizo v. Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017)
(suggesting that SSR 16-3p "makes clear what our precedent
already required").

standards," and helping Plaintiff phrase his communications with his case managers (who had not been told the nature of Plaintiff's impairments) (A.R. 45-47). Plaintiff had been working with his job coach for two months and said that he did not need the coach for "hands on" teaching as much, but thought he still needed the coach "[a] little bit" for things like helping Plaintiff communicate with others (A.R. 46-68). Plaintiff admitted, however, that the job at Wal-mart involved "hardly any interaction" (A.R. 46-48). Plaintiff said he actually would like more interaction with co-workers (A.R. 47, 49-50). Plaintiff admitted that he can "work with other people" (A.R. 49).

In a "Function Report - Adult - Third Party" form dated December 16, 2014, Plaintiff's father stated that Plaintiff has issues with talking, seeing, memory, completing tasks, concentration, understanding, following instructions with multiple steps, using his hands and getting along with others, but Plaintiff could pay attention for 90 minutes without a break (A.R. 316-24). Plaintiff's daily activities consisted of self care (with assistance shaving), occasionally feeding a cat, preparing a school backpack, attending classes (with transportation), studying with tutors, watching television and playing video games (A.R. 316-18, 320). Plaintiff reportedly is "dangerous" with sharp objects and objects that could injure, due to Plaintiff's fine motor issues which Plaintiff has had since birth (e.g., he is unable to fasten intricate/small fasteners), and cannot safely use a stove or oven (A.R. 316, 318, 322). Plaintiff reportedly could do laundry, vacuum, and dust (with reminders), taking approximately twice the time it normally takes to perform these tasks

1 (A.R. 318). Plaintiff could go outside and shop in stores with
2 parental assistance, but does not drive and cannot navigate public
3 transportation requiring a bus transfer (A.R. 319). Plaintiff could
4 go to school, play basketball on occasion, attend sporting events with
5 friends, go to the mall, and visit family and friends with someone
6 accompanying him for all activities except attending school (A.R.
7 320). Plaintiff reportedly handles stress and changes in routine
8 poorly, with frustration and anger when he cannot perform to
9 expectations (A.R. 322).

10
11 In a "Function Report - Adult" form dated December 7, 2014,
12 Plaintiff claimed similar limitations and abilities (A.R. 325-33).
13 Plaintiff stated that he has trouble talking in a way that is not
14 confusing to others, has trouble writing legibly, easily forgets
15 things and is slower than most people (A.R. 325, 330). Plaintiff
16 reported that he could handle stress "ok" and must get "used to"
17 changes in routine (A.R. 331).

18
19 **B. The ALJ's Reasoning is Legally Sufficient.**
20

21 The ALJ found that Plaintiff's testimony and statements were "not
22 entirely consistent with the medical evidence and other evidence in
23 the record" (A.R. 21). The ALJ acknowledged Plaintiff's alleged
24 inability to work due to mental and visual processing problems,
25 difficulty with fine motor coordination, inability to read body
26 language and difficulty with memory (A.R. 19-20). The ALJ determined
27 that these allegations do not persuasively establish a more
28 restrictive residual functional capacity than the ALJ found to exist

1 because: (1) contrary to Plaintiff's allegations that he has
2 difficulty with memory, Dr. Benigno's mental status examination showed
3 Plaintiff's immediate, recent and remote memories were intact; (2) Dr.
4 Fine's treating notes indicate Plaintiff was searching for jobs, going
5 to interviews, and getting along with his family, and Plaintiff had
6 obtained employment at Wal-mart where he was getting along with his
7 job coach and doing basic janitorial work; (3) assessment of
8 Plaintiff's vocational functioning showed he was capable of the
9 "exceptional" performance of hands-on assembly tasks, and was able to
10 ask questions of others; (4) full scale IQ testing showed low average
11 ability, average functioning in adaptive skills, and some limitation
12 in reciprocal social interaction, which the medical expert found
13 consistent with the ALJ's residual functional capacity determination;
14 (5) Plaintiff's Individual Program Plan stated he was able to focus on
15 a preferred task for at least 30 minutes; (6) although the record
16 showed a diagnosis of autism and some special education, Plaintiff had
17 a high grade point average of 3.53 in 12th grade, and had obtained an
18 Associate's Degree in radio broadcasting; and (7) in spite of alleged
19 mental and visual processing problems, fine motor coordination
20 difficulties and problems with interpretation of body language and
21 picking up social cues, Plaintiff is able to follow basic microwave
22 instructions, do laundry, vacuum, go to sports events with friends,
23 play video games and play basketball (A.R. 19-22).

24
25 Reasons 2, 3, 5, 6 and 7 were acceptable bases upon which to
26 discount Plaintiff's subjective statements. Inconsistencies between
27 claimed incapacity and actual activities properly can impugn a
28 claimant's credibility. See, e.g., Molina v. Astrue, 674 F.3d 1104,

1 1112 (9th Cir. 2012) ("the ALJ may consider inconsistencies in the
2 claimant's testimony or between the testimony and the claimant's
3 conduct"); Turner v. Commissioner, 613 F.3d 1217, 1225 (9th Cir. 2010)
4 (even activities performed with some difficulty can undermine a
5 claimant's allegations of totally disabling impairment); Lingenfelter
6 v. Astrue, 504 F.3d 1028, 1040 (9th Cir. 2007) (activities
7 inconsistent with alleged symptoms relevant to credibility
8 determination); Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.
9 2002) (inconsistency between claimant's testimony and claimant's
10 actions supported rejection of claimant's credibility); Verduzco v.
11 Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (inconsistency between
12 claimant's testimony and claimant's actions cited as a clear and
13 convincing reason for rejecting claimant's testimony).

14
15 Reasons 1 and 4 were also acceptable bases upon which to discount
16 Plaintiff's subjective statements. Asserted inconsistencies between a
17 claimant's subjective complaints and the objective medical evidence
18 can be a factor in discounting a claimant's subjective complaints, but
19 cannot "form the sole basis." See Burch v. Barnhart, 400 F.3d 676,
20 681 (9th Cir. 2005); Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir.
21 2001) (same); see also Carmickle v. Commissioner, 533 F.3d 1155, 1161
22 (9th Cir. 2008) ("Contradiction with the medical record is a
23 sufficient basis for rejecting the claimant's subjective testimony").
24 Where there is an alleged inconsistency between the medical evidence
25 and a claimant's subjective complaints, the ALJ must make a specific
26 finding identifying the testimony the ALJ found not credible and
27 linking the rejected testimony to parts of the medical record
28 supporting the ALJ's non-credibility determination. See Brown-Hunter

1 v. Colvin, 806 F.3d at 494 (holding it was legal error for ALJ to fail
2 to make such a link) (citations omitted). Here, the ALJ's findings
3 satisfied these requirements.

4
5 For the same reasons, to the extent Plaintiff claimed before the
6 Administration (as he does here) that he requires a job coach, the ALJ
7 properly rejected such a claim, given Plaintiff's intact memory and
8 demonstrated ability to sustain concentration and to work without
9 distraction during the vocational assessment and psychological testing
10 (A.R. 23 (citing Plaintiff's OPARC hands on assessment at A.R. 553-61
11 and Dr. Benigno's testing at A.R. 545)).

12
13 Assuming, arguendo, the invalidity of one or more of the ALJ's
14 stated reasons for discounting Plaintiff's subjective statements and
15 testimony, the Court properly may uphold the discounting where
16 sufficient valid reasons have been stated. See Carmickle v.
17 Commissioner, 533 F.3d at 1162-63. The ALJ stated sufficient valid
18 reasons to allow this Court to conclude that the ALJ discounted
19 Plaintiff's subjective statements and testimony on permissible
20 grounds. See Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004).
21 The Court therefore defers to the ALJ's determination. See Lasich v.
22 Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will defer to
23 Administration's credibility determination when the proper process is

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1 used and proper reasons for the decision are provided); accord Flaten
2 v. Secretary of Health & Human Services, 44 F.3d 1453, 1464 (9th Cir.
3 1995).⁹

4
5 **CONCLUSION**

6
7 For all of the foregoing reasons,¹⁰ Plaintiff's motion for
8 summary judgment is denied and Defendant's motion for summary judgment
9 is granted.

10
11 LET JUDGMENT BE ENTERED ACCORDINGLY.

12
13 DATED: February 22, 2019.

14
15 /s/
16 CHARLES F. EICK
17 UNITED STATES MAGISTRATE JUDGE
18
19

20
21 ⁹ The Court does not determine herein whether Plaintiff's
22 subjective complaints are credible. Some evidence suggests that
23 those complaints may be credible. However, it is for the
24 Administration, and not this Court, to evaluate the credibility
of witnesses. See Magallanes v. Bowen, 881 F.2d 747, 750, 755-56
(9th Cir. 1989).

25 ¹⁰ The Court has considered and rejected all of
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the
27 circumstances of this case show any "substantial likelihood of
28 prejudice" resulting from any error allegedly committed by the
Administration. See generally McLeod v. Astrue, 640 F.3d 881,
887-88 (9th Cir. 2011) (discussing the standards applicable to
evaluating prejudice).